



**State of New Hampshire
DEPARTMENT OF ENVIRONMENTAL SERVICES**

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In re: George Maglaras

33 Cocheco Road
Dover, NH

**NOTICE OF DECISION ON
MOTION FOR RECONSIDERATION**

Administrative Fine No. AF 2000-047

Background

On August 1, 2000, the Waste Management Division ("the Division") issued a Notice of Proposed Administrative Fine and Hearing No. AF 2000-047 ("the Notice") to George Maglaras for failing to register a gasoline underground storage tank ("UST") system he owns on property located at George's Marina, 33 Cocheco Road, Dover, NH ("the Facility"). The Division sought a fine in the amount of \$1,000.

The hearing was held on October 2, 2000. Mr. Maglaras was not present at the hearing, nor was anyone else present on his behalf, and he did not notify the Department of Environmental Services ("DES") of his absence prior to the hearing. It was determined for the record that Mr. Maglaras was properly notified of the hearing date, and so the hearing was held pursuant to Env-C 204.09, subject to a motion to reconvene. At the hearing, the Division presented testimony and evidence to support its position.

The Decision was issued on October 25, 2000, and imposed a fine against Mr. Maglaras in the amount of \$1,000 for failing to register the Facility.

On November 21, 2000, Mr. Maglaras filed a motion for reconsideration ("the Motion"). In the Motion, Mr. Maglaras stated that based on conversations he had with Division staff, he believed that he did not have to attend the October 2nd hearing. (*Motion*) In order to afford Mr. Maglaras an opportunity to present his case, a rehearing was scheduled and held on February 5, 2001. Mr. Maglaras was present at the rehearing. Present on behalf of Mr. Maglaras was Bruce Bentham of C.A.B. Services and Alan Bryant of Allseasons Environmental, L.L.C. The Division was represented by Division staff.

Discussion and Findings

The Violation

In the Decision, a fine was imposed against Mr. Maglaras for violating Env-Wm 1401.04 by failing to register the Facility. *(Decision)*

RSA 146-C:3 and Env-Wm 1401.04 require the owner of a UST to register each facility with DES. In order to prove a violation of RSA 146-C:3 and Env-Wm 1401.04, the Division must prove by a preponderance of the evidence that Mr. Maglaras failed to register the Facility.

The Facility is located at George's Marina, 33 Cocheco Road, Dover, NH and is identified as UST #0-114731. *(Record)*

The record from the October 2, 2000 hearing shows that by letter dated September 9, 1999, DES notified Mr. Maglaras that he was required to register the Facility. A copy of Env-Wm 1401 and a registration form were enclosed with the letter. Mr. Maglaras did not respond to this letter. By certified letter dated October 28, 1999, DES again notified Mr. Maglaras that he was required to register the Facility. DES again enclosed a copy of the rules and a registration form with the letter. Mr. Maglaras did not respond to this letter. By certified letter dated March 23, 2000, DES notified Mr. Maglaras for the third time that he was required to register the Facility. DES again enclosed a copy of the rules and a registration form. *(Record)*

DES issued the Notice of Proposed Fine and Hearing No. AF 2000-047 to Mr. Maglaras on August 1, 2000. On August 21, 2000 Mr. Maglaras registered the tank. On August 31, 2000 Mr. Maglaras removed the tank. *(Record)*

At the rehearing, Mr. Maglaras discussed his efforts to close and remediate the Facility. He testified how he worked with the previous owners of the Facility to prepare a report that addressed contamination at the Facility and removal of the UST. He explained that he was not sure how to proceed with removing the tank and remediating the Facility and spoke with Division staff several times in 2000 to discuss these issues. Division staff forwarded a list of contractors to him who could do the work. In July 2000, Mr. Maglaras contacted Mr. Bentham who recommended temporarily closing the Facility rather than removing the UST. Mr. Maglaras and Mr. Bentham discussed this option with Division staff who directed them to remove the tank. Subsequently, Mr. Maglaras registered the Facility, and on August 31, 2000, removed the tank. With respect to registering the Facility, Mr. Maglaras acknowledged that he received correspondence from DES regarding the requirements for registration. *(Motion, Testimony of Maglaras)*

At the rehearing, Division staff emphasized that the UST was not removed in a timely manner. Staff maintained that there was extensive outreach and communications with Mr. Maglaras but despite efforts on the part of DES, the UST was not timely removed and the closure reports show gasoline contamination at the Facility. Staff emphasized, however, that funds are available to Mr. Maglaras for removing this contamination. *(Testimony of Division)*

The issue in this case is whether Mr. Maglaras failed to register the Facility. Much of the

testimony at the rehearing revolved around Mr. Maglaras's efforts to address contamination and close the Facility, and how these efforts have created a financial and emotional burden for him. It is true that Mr. Maglaras has undertaken efforts to remediate the Facility and has removed the UST. (Although, it was not removed in a timely manner.) The requirement at issue here, however, is whether he registered the Facility. His testimony failed to address this issue.

The record shows that the Division notified Mr. Maglaras by letter on three separate occasions within a seven month period requesting that he register the Facility. The Division enclosed a copy of the applicable rules and a registration form with each letter. Despite these efforts on the part of DES, Mr. Maglaras failed to register the Facility. The record further shows that it was not until after he received the Notice that he completed the registration and removed the tank.

In the Motion, and at the rehearing, Mr. Maglaras failed to present any new evidence relevant to the violation as to why the fine should not be imposed. On the record, I believe that the evidence is sufficient to show that Mr. Maglaras failed to register the Facility. Thus, the imposed fine is warranted.

The Rehearing

In the Motion, and at the rehearing, Mr. Maglaras stated that he was dismayed when he received the Notice because based on his conversations with Division staff, he believed that the October 2nd hearing was unnecessary. (*Motion, Testimony of Maglaras*)

At the rehearing, Division staff stated that a misunderstanding may have arisen in conversations between Mr. Maglaras and staff. (*Testimony of Division*)

While a misunderstanding may have arisen between the parties, I believe this does not affect the Decision since Mr. Maglaras was provided with a rehearing and an opportunity to present his case.

Decision

For the reasons discussed above, the Motion is denied. The total fine of \$1,000 shall be paid within 30 days of the date of this Notice of Decision on the Motion for Reconsideration. Fine payments shall be by check or money order payable to "Treasurer - State of NH" and sent to the attention of James Ballentine, DES/Office of the Commissioner, PO Box 95, Concord, NH 03302-0095.

So Ordered,

Date: March 12, 2001

 **COPY**

Robert W. Varney
Commissioner